

**§ 87-129. Underground Damage Prevention Review Board; enforcement; civil penalties.**

(a) There is hereby established the Underground Damage Prevention Review Board to review reports of alleged violations of this Article. The members of the Board shall be appointed by the Governor. The Board shall consist of 15 members as follows:

- (1) A representative from the North Carolina Department of Transportation;
- (2) A representative from a facility contract locator;
- (3) A representative from the Notification Center;
- (4) A representative from an electric public utility;
- (5) A representative from the telecommunications industry;
- (6) A representative from a natural gas utility;
- (7) A representative from a hazardous liquid transmission pipeline company;
- (8) A representative recommended by the League of Municipalities;
- (9) A highway contractor licensed under G.S. 87-10(b)(2) who does not own or operate facilities;
- (10) A public utilities contractor licensed under G.S. 87-10(b)(3) who does not own or operate facilities;
- (11) A surveyor licensed under Chapter 89C of the General Statutes;
- (12) A representative from a rural water system;
- (13) A representative from an investor-owned water system;
- (14) A representative from an electric membership corporation; and
- (15) A representative from a cable company.

(a1) Each member of the Board shall be appointed for a term of four years. Members of the Board may serve no more than two consecutive terms. Vacancies in appointments made by the Governor occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(a2) No member of the Board may serve on a case where there would be a conflict of interest.

(a3) The Governor may remove any member at any time for cause.

(a4) Eight members of the Board shall constitute a quorum.

(a5) The Governor shall designate one member of the Board as chair.

(a6) The Board may adopt rules to implement this Article.

(b) The Notification Center shall transmit all reports of alleged violations of this Article to the Board, including any information received by the Notification Center regarding the report.

(b1) The Board shall review all reports of alleged violations of this Article and accompanying information. If the Board determines that a person has violated any provision of this Article, the Board shall determine the appropriate action or penalty to impose for each such violation. Actions and penalties may include training, education, and a civil penalty not to exceed two thousand five hundred dollars (\$2,500). The Board shall notify each person who is determined to have violated this Article in writing of the Board's determination and the Board's recommended action or penalty. A person determined to be in violation of this Article may request a hearing before the Board, after which the Board may reverse or uphold its original finding. If the Board recommends a penalty, the Board shall notify the Utilities Commission of the recommended penalty, and the Utilities Commission shall issue an order imposing the penalty.

(c) A person determined by the Board under subsection (b1) of this section to have violated this Article may appeal the Board's determination by initiating an arbitration proceeding before the Utilities Commission within 30 days of the Board's determination. If the violating party elects to initiate an arbitration proceeding, the violating party shall pay a filing fee of two hundred fifty dollars (\$250.00) to the Utilities Commission, and the Utilities

Commission shall open a docket regarding the report. The Utilities Commission shall direct the parties enter into an arbitration process. The parties shall be responsible for selecting and contracting with the arbitrator. Upon completion of the arbitration process, the Utilities Commission shall issue an order encompassing the outcome of the binding arbitration process, including a determination of fault, a penalty, and assessing the costs of arbitration to the non-prevailing party.

(c1) A person may timely appeal an order issued by the Utilities Commission pursuant to this section to the superior court division of the General Court of Justice in the county where the alleged violation of this Article occurred or in Wake County, for trial de novo within 30 days of entry of the Utilities Commission's order. The authority granted to the Utilities Commission within this section is limited to this section and does not grant the Utilities Commission any authority that they are not otherwise granted under Chapter 62 of the General Statutes.

(d) The provisions of this Article do not affect any civil remedies for personal injury or property damage otherwise available to any person, except as otherwise specifically provided for in this Article. The penalty provisions of this Article are cumulative to and not in conflict with provisions of law with respect to civil remedies for personal injury or property damage. The clear proceeds of any civil penalty assessed under this section shall be used as provided in Section 7(a) of Article IX of the North Carolina Constitution. In any arbitration proceeding before the Utilities Commission, any actions and penalties assessed against any person for violation of this Article shall include the actions and penalties set out in subsection (b1) of this section. (2013-407, s. 2; 2015-286, s. 3.12.)